Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

No. 79-510

In the Supreme Court of the United States

OCTOBER TERM, 1979

AMERICAN TRUCKING ASSOCIATIONS, INC., PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENTS IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

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The judgment of the court of appeals in this case was entered on June 26, 1979 (Pet. App. 17a-18a). Petitioner did not obtain an extension of time within which to file a petition for a writ of certiorari. The time provided by 28 U.S.C. 2101(c) within which to file a petition therefore expired on September 24, 1979. The petition was not filed until September 26, 1979. The time provided by Section

2101(c) is jurisdictional. *Department of Banking* v. *Pink*, 317 U.S. 264 (1942). It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.[1]

WADE H. MCCREE, JR.
Solicitor General

NOVEMBER 1979

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[1]On October 4, 1979, petitioner filed a "Motion to Accept Late Filed Petition For Writ of Certiorari," asserting only that counsel miscalculated the length of the 90-day period. This Court's Rules do not provide for any such motion; Rule 34(2) provides that any application for an extension of time within which to file a petition for a writ of certiorari "must be presented to the clerk within the period sought to be extended."

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